## SECTION 5.
## LABOR RELATIONS

The vast majority of City employees are represented by employee organizations or unions. A limited number of top level management and confidential employees along with officials appointed by the Mayor or Council are not represented by employee organizations. Generally, labor relations between City employees and Council are governed by the Meyers-Milias-Brown Act ("MMBA") which is found in Government Code Sections 3500 *et seq.*

The purpose of the MMBA is to grant employees the right to form, to join, and to participate in the activities of the employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. The MMBA also gives employees the right to refuse to join or participate in employee organizations.

### A. DUTIES OF THE CITY IN EMPLOYEE RELATIONS

When dealing with employee organizations, the City has a requirement to "meet and confer" with recognized bargaining groups. This meet and confer requirement mandates that the City sit down and discuss in good faith, issues regarding wages, hours and other terms and conditions of employment with representatives of recognized employee organizations. Prior to taking any action, the City must fully consider such presentations as are made by the employee organization on behalf of its members. This full consideration must be done prior to arriving at a determination of policy or a course of action on issues involving wages, hours or other terms and conditions of employment.

In order to meet and confer in good faith with employee organizations, the Council must designate its representative to meet with those representatives of recognized employee organizations. Under Fresno Municipal Code ("FMC") Section 2-1906, the City Manager or his or her designee shall serve as the Council representative. Historically, the Labor Relations Manager has performed this function with representatives from the affected Departments. Both sides have the obligation to meet and confer promptly upon request of the other party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals. Each party must attempt to reach agreement on matters within the scope of representation (wages, hours and other terms and conditions of employment). The process must include adequate time for resolution of impasses where specific procedures for such resolution are contained in local rules or by mutual consent of the parties. If either side refuses to bargain in good faith, the other side may seek judicial action to enforce the good faith bargaining requirement.

During negotiations, one common bad faith negotiating technique is to attempt to circumvent the process. At times, a union representative will contact Councilmembers directly and attempt to "negotiate" around the bargaining team chosen by the Council. Discussions with and presentations and correspondence to a Councilmember are permissible and constitutionally protected; negotiations are not.

Negotiations with Councilmembers constitute an unfair employee relations practice under Section 2-1915 of the FMC.

Another example of bad faith negotiating would be when one side enters into negotiations with no intention of listening to the other side prior to making a decision. Often, this is manifested by "take it or leave it" proposals early in the process. The key to labor negotiations are to keep an open mind throughout the process and follow those guidelines that are laid down by the Council when it establishes the negotiating parameters.

## B. IMPASSE PROCEDURES

In the meet and confer process, the parties may be unable to resolve issues and reach an agreement. In these cases, procedures in the City's Employer-Employee Relations Ordinance dealing with impasses are to be followed, except IAFF (fire) and FPOA (police), with both units now having additional remedies under Senate Bill ("SB") 402 as discussed below. One method of impasse resolution is called "fact-finding." In a fact-finding procedure, an outside person selected by mutual agreement of the parties is often brought in to conduct an impartial investigation and determination as to facts. A report is prepared and delivered by the fact-finder to the parties in impasse.

Another impasse procedure under the City's Employer-Employee Relations Ordinance is called mediation. Mediation is the voluntary process in which an outsider is brought in from the State Conciliation Service or Federal Mediation and Conciliation Service. This mediator shuttles between the parties and attempts to get the parties to reach settlement. Mediation procedures are non-binding and at times used when the parties have trouble finding a middle ground in an area in which they feel a settlement could be reached.

After impasse procedures are completed, Council may take a final step without agreement called unilateral action. Unilateral action allows the Council to implement its "last, best and final offer." Unilateral action is a step that is rarely taken and should only be considered after a long negotiating process followed by failure of impasse procedures to allow agreement to be reached.

The State Legislature has enacted SB 402 regarding binding interest arbitration. When an impasse has occurred with either IAFF/FPOA in a situation where either a mediator cannot be agreed upon or such mediation fails to affect settlement of the economic issues, the employee organization may request that the dispute be resolved by way of interest arbitration. In the interest arbitration system established by State law, an arbitration panel will hear evidence, receive and review the final offers or position of each party and render a decision which effectively writes the memorandum of understanding on the unresolved economic issues. This new legislation has been challenged in litigation filed by the California League of Cities as unconstitutional. The litigation was filed on January 2, 2001, before the Fifth District Court of Appeal.

## C. MEMORANDUM OF UNDERSTANDING

Once agreement is reached by the negotiators, the agreement is put into writing in a document called a Memorandum of Understanding ("MOU"). The MOU is the basic contract between the employee organization and the City. Its term is subject to negotiation but usually covers one, two or three years.

During the term of the agreement, the City and employee organization must follow the agreements reached in the MOU in their labor negotiations. Often, the MOU will spell out procedures to deal with layoffs or other policies that may need to be implemented during the term of the agreement. To the extent that such procedures are specified in the MOU, the parties are bound by those procedures. Negotiations, during the term of an MOU, cannot be reopened without following the procedures set out in the MOU.

Once the agreement is reached between the negotiating teams, the MOU is then submitted to the respective bodies for approval. The employee organization usually holds a vote of its membership on the agreement. In addition, Council will be asked to approve the final document. Until the Council approves the final document, it will not be effective.

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